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March 11, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

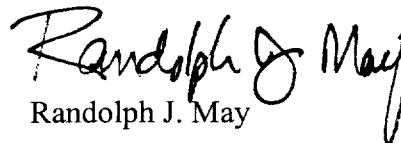
Re: **IB Docket No. 98-60; Alternative Incentive
Based Regulation of COMSAT Corporation**

Dear Ms. Salas:

Enclosed for filing in IB Docket 98-60 you will find an original and 11 copies of the "Petition for Reconsideration by CBS Corporation, National Broadcasting Company, Inc., Turner Broadcasting System, Inc., and The Walt Disney Company" in the above-referenced proceeding. Please date stamp the "stamp and return" copy of the petition for return by the messenger.

Please do not hesitate to contact me if you have any questions.

Sincerely,


Randolph J. May

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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)
)
Policies and Rules for Alternative)
Incentive Based Regulation of)
Comsat Corporation)

IB Docket No. 98-60

RECEIVED
MAR 11 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**PETITION FOR RECONSIDERATION BY CBS CORPORATION,
NATIONAL BROADCASTING COMPANY, INC., TURNER
BROADCASTING SYSTEM, INC., AND THE WALT DISNEY COMPANY**

CBS Corporation, National Broadcasting Company, Inc., Turner Broadcasting System, Inc., and The Walt Disney Company, on behalf of its subsidiary, ABC, Inc., (collectively the "Networks"), by their attorneys and pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, hereby submit this petition seeking limited reconsideration of the Commission's Report and Order, released February 9, 1999, in the above-referenced proceeding.¹ This petition asks the Commission to reconsider (1) its decision not to require annual rate reductions for occasional use video service and (2) its failure to specify in a more detailed fashion the procedure to be followed in evaluating any COMSAT petitions which seek reclassification of routes to "competitive" status.

I. BACKGROUND

In the Report and Order, the Commission adopted what it refers to as "incentive-based price regulation" for COMSAT's provision of INTELSAT's services in "non-competitive"

¹Policies and Rules for Alternative Incentive Based Regulation of COMSAT Corporation, IB Docket No. 98-60, FCC 99-17, February 9, 1999.

markets.² As major users of occasional use video services in connection with the operation of their broadcast and cable networks, the Networks' interest in this proceeding concerns the regulatory treatment of the 142 occasional use markets between the United States and foreign countries which are classified as "non-competitive" because no entity other than COMSAT provides service on those routes. In both their initial and reply comments, the Networks stated that they do not object to implementation of an appropriately-structured incentive-based ("price cap") regime for COMSAT that contains as a central element "immediate and regular rate reductions for the occasional use service."³ The incentive-based regime adopted by the Commission in the Report and Order is a step in the right direction. But, as described below, the Commission should reconsider its failure to require at least 4% annual rate reductions for occasional use video service and its failure to detail more fully the procedure to be followed if COMSAT seeks reclassification of a non-competitive route. By taking these actions, the incentive regulation regime would be improved significantly.

II. THE COMMISSION SHOULD REQUIRE ANNUAL RATE REDUCTIONS OF FOUR PERCENT FOR OCCASIONAL USE VIDEO SERVICE

In their initial comments, the Networks requested that the Commission adopt an aggressive annual downward productivity adjustment as part of any incentive-based regime applicable to COMSAT so that customers would benefit from regular rate reductions.⁴ In the

²Report and Order, at para. 1.

³Reply Comments of Networks, June 12, 1998, at 3.

⁴The Networks pointed out that the Commission recently had adopted an annual productivity adjustment of 6.5% for the local exchange carriers. See Comments of Networks, at 5-6. In their reply comments, as evidence of the traditional rapid productivity gains in the satellite industry, the Networks referred to the history of the COMSAT rate cases of the late 1970s and 1980s when sizeable rate reductions and customer refunds were required to bring

Report and Order, the Commission accepted COMSAT's proposal for a 4% annual rate reduction for switched voice services, while requiring only a one-time 4% reduction for occasional video service.⁵ The Commission stated that "[w]hile we would favorably view a proposal to reduce rates by a given percentage annually for occasional-use video service, similar to COMSAT's proposal in the non-competitive switched-voice market," it nevertheless found COMSAT's proposal reasonable because occasional rates will not be increased for an indefinite period of time.⁶

The Commission should "favorably view" this request that the occasional video service users receive the benefit of at least the same annual 4% rate reduction that switched voice users will receive. The Commission offers no persuasive reasons why users in the non-competitive occasional user service markets should not be treated equitably. It is one thing to reject the Networks' (and AT&T's) proposal for a 6.5% annual rate reduction on the basis that, in the Commission's view, the Networks (and AT&T) failed to justify applying the price cap methodology used for the dominant local exchange carriers to COMSAT.⁷ It is quite another to accept, without any rational basis, COMSAT's proposal to treat users of two non-competitive COMSAT services differently for purposes of the incentive regulation regime.

COMSAT's earnings down to levels the Commission considered to be in the reasonable range. Reply Comments, at page 4, note 8.

⁵Report and Order, at paras. 22 and 26. COMSAT opposed any rate reduction for the occasional service in its comments and reply comments, but proposed a one-time 4% reduction in a subsequent ex parte presentation. Notice of Ex Parte Presentation Letter from COMSAT to the FCC, October 9, 1998.

⁶Report and Order, at para. 29.

⁷Report and Order, at para. 30.

The Commission should remember that it has adopted what purports to be an “*incentive-based*” regulatory regime. As the Commission is well aware, the core idea of such a regime is that the abandonment of traditional rate-of-return regulation which caps profits in favor of a regime which allows carriers to retain the profits they earn will provide carriers with a continuing incentive to maximize productivity gains. A one-time rate reduction does not provide COMSAT with ongoing incentives to increase productivity, and such a regime is inconsistent with the concept at the heart of the incentive regimes previously adopted for AT&T and the local exchange carriers.⁸ Indeed, with regard to switched voice service, COMSAT justified its proposal by asserting in its comments that “[l]ow volume customers will enjoy rates that are guaranteed to drop at a rate of 4% *annually* [and] this *declining* rate cap provides real incentives for COMSAT to *continually* improve its productivity and efficiency.”⁹ Absent a similar “declining” rate cap for the occasional services, COMSAT will lack real incentives to “continually” improve the occasional service.

Although the Commission does not say so explicitly, it appears that the Commission may have been swayed to accept COMSAT’s *ex parte* proposal for only a one-time rate reduction for occasional service because of the service’s relatively small size.¹⁰ This would not be a rational basis for the differential treatment between switched voice and occasional use

⁸Policy and Rules Concerning Rates for Dominant Carriers (AT&T Price Cap Order), 4 FCC Rcd 2873 (1989); Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, (LEC Price Cap Order), 5 FCC Rcd 6786 (1990); Price Cap Performance Review for Local Exchange Carriers, 12 FCC Rcd 16642 (1997).

⁹COMSAT Comments, IB Docket No. 98-60, May 28, 1998, at 11. Emphasis added.

¹⁰See Report and Order, at para. 30, where the Commission refers to COMSAT’s assertion that occasional use service generated less than \$850,000 in revenues in 1997 on non-competitive routes.

service. As shown above, COMSAT referred to the customers on its non-competitive switched voice routes as “low volume.” And, the Commission itself referred to “the small size of this [switched voice] market in terms of revenue”¹¹ In any event, apart from the inequity of the differential treatment, the relatively small size of a service’s revenues should not be a basis for denying the service’s captive customer base the ongoing benefits on an appropriately-structured incentive-regulation regime.¹² Therefore, the Commission should require COMSAT to implement 4% annual rate reductions for non-competitive occasional service markets during the life of the incentive regulation regime.¹³

III. THE COMMISSION SHOULD SET FORTH MORE FULLY THE PROCEDURE TO BE FOLLOWED IF COMSAT SEEKS RECLASSIFICATION OF A NON-COMPETITIVE ROUTE

As the Commission observed in the Report and Order, the Networks advocated the adoption of a notice and comment rulemaking process prior to making any determination

¹¹Report and Order, at para. 21.

¹²In the context of rejecting the Networks’ (and AT&T’s) proposal to adopt a productivity adjustment methodology for COMSAT comparable to the one recently adopted for the LECs, the Commission expresses concerns about having to engage “in a complex, resource-intensive study.” Report and Order, at para. 30. Of course, requiring an annual 4% rate reduction for occasional service -- like the annual 4% rate reduction for switched voice service -- is simple in the extreme and will involve no expenditure of resources by the Commission or COMSAT to conduct studies, complex or otherwise.

¹³The Networks are not opposed to reexamination of the incentive regulation regime as conditions change. Indeed, the Commission observes in paragraph 43 that it has recently proposed permitting direct access to the INTELSAT system in order to “reduce COMSAT’s control over INTELSAT capacity serving non-competitive markets” and to “give United States carriers and users the option of using another supplier” If direct access is implemented, it would be appropriate at that time to reexamine the regulatory treatment appropriate for COMSAT under the then-prevailing circumstances.

regarding changes in market classifications.¹⁴ The Commission pointed out that: “The Networks argue that whatever procedure the Commission adopts should be one in which affected parties are afforded adequate and effective notice of a proposed change and a full opportunity to be heard.”¹⁵ As one means of ensuring interested parties a fair opportunity to be heard, the Networks suggested that, in light of the small number of U.S. customers of occasional service, COMSAT also should be required to notify these customers in advance of proposed changes to market classification.¹⁶

Although the Commission did not adopt the rulemaking process the Networks advocated, the Commission did outline the initiation of a process:

Initially, Comsat must file a petition with the Commission asking that a particular market or markets be reclassified as non-dominant. For the ‘non-competitive’ switched-voice and private line service markets, Comsat must include evidence that the market is served by a United States carrier through submarine cable facilities. For occasional-use video markets, Comsat must include evidence that another satellite carrier is providing transmit and receive (uplink and downlink) occasional-use video service. The type of information required in this showing shall include the (a) name of the cable or satellite provider, (b) the country or countries where the new cable circuit or occasional-use video services provision exists, and (c) the estimated capacity available from the competitor. Comsat must support its filing with an affidavit.¹⁷

The procedure outlined above is acceptable as far as it goes. It spells out the means by which COMSAT may initiate a reclassification request and the type of information COMSAT must provide in support of its petition. While the Commission obviously contemplates some further process by which parties would have the opportunity to challenge

¹⁴Report and Order, para. 37.

¹⁵Report and Order, at para. 37.

¹⁶Networks’ Reply Comments, at page 6, note 11.

¹⁷Report and Order, at para. 39.

COMSAT's petition,¹⁸ it does not set forth that process in the order. In advance of COMSAT filing a reclassification petition, the Commission should now establish the remainder of the process with the following elements: (1) COMSAT must provide customers of the occasional television service with written notice concerning the markets for which it is seeking reclassification at the same time it files its petition;¹⁹ (2) COMSAT's petition will be placed on public notice; and (3) interested parties will have 30 days to comment on COMSAT's proposal.

The Networks assume that the Commission had in mind these minimal requirements as elements of rounding out a process that would give interested parties a fair opportunity to participate. It would be useful to adopt the requirements explicitly in response to this petition.

¹⁸Report and Order, at para. 40.

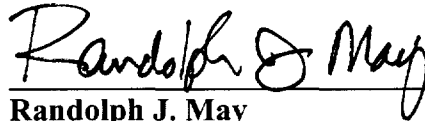
¹⁹COMSAT could be allowed to notify only those customers who have used the service within the previous year. Based upon COMSAT's representations concerning the small size of the service and the Networks' own knowledge concerning the size of the customer base, this obviously would not be an overly burdensome requirement.

IV. CONCLUSION

For the reasons stated in this petition for reconsideration, the Commission should require annual rate reductions of four percent for the occasional use video service and also spell out more fully the procedure to be followed if COMSAT seeks reclassification of non-competitive routes.

Respectfully submitted,

**CBS CORPORATION
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CERTIFICATE OF SERVICE

I, Elyse N. Sanchez, do hereby certify that true and correct copies of the foregoing, "Petition for Reconsideration of CBS Corporation, National Broadcasting Company, Inc., Turner Broadcasting System, Inc. and The Walt Disney Company" were served by hand or first-class U.S. mail, postage prepaid, this 11th day of March, 1999, on the following:

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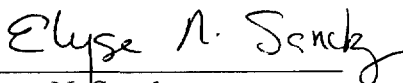
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